

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on January 11, 2007, and the references cited therewith. The Examiner's indication of the allowability of claims 19-28 is noted with thanks.

Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the Office Action has failed to establish a *prima facie* case of unpatentability under 35 U.S.C. 101. See MPEP 2106 (II)(D). With respect to independent claim 14, the Office Action asserts "'A machine-readable medium' does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter)." Applicant respectfully disagrees. It is well-established that a "machine-readable medium" is considered to be a manufacture within the scope of 35 U.S.C. 101. In fact, section 2106.01 of the MPEP, discussing relevant case law, states "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035." This same section of the MPEP further states:

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim....

When a computer program is recited in conjunction with a physical structure, such as a computer memory, USPTO personnel should treat the claim as a product claim.

Thus, the "machine-readable medium" recited in independent claim 14 falls within the "manufacture" category of patent eligible subject matter recited in 35 U.S.C. 101.

The Office Action next asserts that the claimed invention is directed to a judicial exception to 35 U.S.C. 101 and is not directed to a practical application of such judicial exception. Applicant respectfully submits that the Office Action merely makes conclusory statements without explaining why the subject matter is non-statutory. As discussed in section 2106 (II)(D) of the MPEP, the examiner bears the initial burden of presenting a *prima facie* case

of unpatentability and must explain in the record the reasons why a claim is for an abstract idea with no practical application.

Moreover, applicant submits that the present claimed invention covers a practical application. Claim 14 recites, *inter alia*, “determining whether a property management device is connected to a communications port of a messaging system” and “determining, based upon comparing the received packet data structure with a data structure for a known type of property management device, if the property management device coupled to the communications port is a known type of property management device.” Applicant submits that at least these two recited operations in claim 14 achieve a useful, concrete and tangible result or a “real world” result. In particular, these “determining” operations result in the ability to differentiate between different property management system protocols, which facilitates the configuration of the messaging system to which the property management device is connected (see, e.g., present application, ¶¶0003, 0008 and 0041).

This case also appears to be similar to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999). In *AT & T Corp.*, the claim at issue recited the steps of “generating a message record for an interexchange call...” and “including, in said message record, a primary interexchange carrier (PIC) indicator having a value which is a function of whether or not the interexchange carrier associated with said terminating subscriber is a predetermined one of said interexchange carriers.” The Federal Circuit held that the “PIC represents information about the call recipient’s PIC, a useful, non-abstract result that facilitates differential billing of long-distance calls made by an IXC’s subscriber.” *Id.* In the present case, the data structure of a received data packet represents information about a property management device (i.e., whether it is a known type of property management device), which is a useful, non-abstract result that facilitates differentiation of different property management system protocols and the configuration of the messaging system (see, e.g., present application, ¶¶0003, 0008 and 0041). Because the claimed invention recited in independent claim 14 covers a practical application, applicant submits that the claim is directed to statutory subject matter under 35 U.S.C. 101.

With respect to independent claims 1 and 11, the Office Action asserts “their methods are performed by software, which is non-statutory therefore rendered [sic] their methods non-statutory.” The Office Action merely concludes that the method claims are non-statutory

because they are implemented by software and again does not explain in the record the reasons why the claims are for an abstract idea with no practical application. The Office Action provides no authority, nor is applicant aware of any authority, that supports the asserted proposition that all methods performed by software are non-statutory per se. To the contrary, both the Supreme Court and the Court of Appeals for the Federal Circuit have held that methods performed by software may qualify as statutory subject matter. See, e.g., *Diamond v. Diehr*, 450 U.S. 175, 209 USPQ 1 (1981); *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999). Moreover, applicant submits that independent claims 1 and 11 are directed to methods that produce a useful, tangible, and concrete result for the same reasons discussed above in connection with claim 14.

Because the Office Action fails to establish a *prima facie* case of unpatentability under 35 U.S.C. 101, applicant requests that the rejection under 35 U.S.C. 101 be withdrawn.

### Conclusion

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

JAMES M. COLEMON

By his Representatives,

**Customer Number: 45459**

Telephone Number: 603-668-6560

by: /Kevin J. Carroll/  
Kevin J. Carroll  
Reg. No. 36,384